Re Mohamad Ezam bin Mohd Nor

HIGH COURT (KUALA LUMPUR) — CRIMINAL TRIAL NO 43–12 OF 2001
ABDUL WAHAB PATAIL J
9 MARCH 2001

Criminal Procedure *— Police investigation — Remand proceedings — Examination of suspect — Grounds for remand order — Remand to identify witnesses to assist in investigation allowed — Whether remand for interrogation purposes allowed — Criminal Procedure Code ss 112 & 113*

A remand order of four days was made against Mohamad Ezam bin Mohd Noor ('the suspect') by the magistrate's court and this remand order was brought to the court's attention by his counsel. The six reasons given by the police in support of the application may be summarized in three broad categories as follows: (a) to conduct questioning upon the suspect (reasons 3 and 4); (b) to assist the police to identify and find documents and equipment involved in the investigation (reason 1); and (c) to enable the police to identify witnesses who can assist in investigations (reasons 2, 5 and 6). The court pursuant to s 323(i) of the Criminal Procedure Code ('CPC') called for and examined the record of the remand proceeding in respect of the suspect. The magistrate in ordering the remand appeared to have accepted all of the reasons advanced by the police in the application. The issue for determination was whether the purpose of obtaining statements under s 112 or 113 of the CPC authorizes under s 117 of the CPC the remand of a person in police custody.

Held, affirming the remand order on the third group of reasons:

(1) Although s 112 of the CPC empowers the police to examine a witness, it does not empower the police to arrest a witness for the purpose of examining him, let alone interrogate him. Arresting a witness and keeping him in custody to answer questions under s 112 of the CPC or to be interrogated is such a novel, even radical development to criminal procedure that there must be express words in the section so as to authorize it (see p 379C–D).

(2) Section 113 of the CPC does not state that there is any right conferred upon the authorities to examine or interrogate a person who is in custody. That the legislature chose to use terms other than 'interrogate' is clear indication that the legislature does not intend retrogression to the laws of the age of inquisition under the courts of the Star Chamber. Interrogation in the sense of questioning aggressively is not simply asking questions, but questioning and insisting upon an answer until the interrogator is satisfied with his answers. The dangers of placing a person under remand so as to be so interrogated are heightened because he is

not at liberty to walk out and walk away from such interrogation (see p 381A, C–D).

(3) Section 117 of the CPC does not authorize the remand of a person for the purpose of questioning him aggressively (interrogating) because ss 112 and 113 of the CPC do not in any case authorize interrogation of a suspect, and he may be questioned systematically (examined) only if he had been cautioned. A remand order for the purpose of interrogating a suspect, or examining him without showing he has been cautioned is therefore bad in law (see pp 383I–384A).

(4) The only reason that ought to have been accepted by the magistrate was as contained in the third group of reasons. Even though the first two groups of reasons were not correct, legal or proper grounds, the third group of reasons cannot be said to be irregular, incorrect, illegal or improper. The nature of the offence for which he was investigated was of planning and organizing daily public demonstrations in the streets, which involved the connivance, cooperation and participation of many other persons. It was obvious that such investigations would take time, and his release would jeopardize the investigations. In the circumstances the initial remand of four days could not be said to be unnecessary (see p 384D–F).

[**Bahasa Malaysia summary**

Satu perintah reman selama empat hari telah dibuat terhadap Mohamad Ezam bin Mohd Noor ('orang yang disyaki') oleh mahkamah majistret dan perintah reman ini dibawa kepada perhatian mahkamah oleh peguam beliau. Enam sebab telah diberikan oleh pihak polis untuk menyokong permohonan ini yang boleh diringkaskan kepada tiga kategori umum seperti berikut: (a) untuk menjalankan soal siasat ke atas orang yang disyaki (alasan-alasan 3 dan 4); (b) untuk membantu pihak polis mengenalpasti dan mencari dokumen-dokumen dan peralatan yang terlibat dalam siasatan (alasan 1); dan (c) untuk membolehkan pihak polis mengenalpasti saksi-saksi yang boleh membantu dalam siasatan (alasan-alasan 2, 5 dan 6). Mahkamah menurut s 323(i) Kanun Acara Jenayah ('KAJ') telah memanggil dan memeriksa rekod prosiding reman berhubung orang yang disyaki tersebut. Majistret dalam memerintahkan reman tersebut tampaknya telah menerima semua alasan yang dikemukakan oleh pihak polis dalam permohonan tersebut. Persoalan untuk ditentukan adalah sama ada tujuan mendapatkan pernyataan-pernyataan di bawah ss 112 atau 113 KAJ memberikan kuasa di bawah s 117 KAJ untuk meremankan seseorang dalam tahanan pihak polis.

Diputuskan, mengekalkan perintah reman berdasarkan alasan-alasan kumpulan ketiga tersebut:

(1) Walaupun s 112 KAJ memberikan kuasa kepada pihak polis untuk memeriksa seorang saksi, ia tidak memberikan kuasa kepada pihak polis untuk menangkap seorang saksi bagi tujuan memeriksa beliau, lebih-lebih lagi menyoal siasatnya. Menangkap seorang saksi dan meletaknya dalam tahanan untuk menjawab soalan di bawah s 112 KAJ atau disoal siasat adalah satu perkembangan yang amat baru, dan juga radikal kepada acara jenayah; maka perlu ada perkataan-perkataan yang dinyatakan dalam seksyen tersebut untuk membenarkan kuasa sebegini (lihat ms 379C–D).

(2) Seksyen 113 KAJ tidak menyatakan bahawa terdapat apa-apa hak yang diberikan kepada pihak berkuasa untuk memeriksa atau menyoal siasat seseorang dalam tahanan. Bahawa perundangan telah memilih untuk menggunakan terma-terma lain selain daripada 'soal siasat' adalah petanda jelas bahawa perundangan tidak meniatkan kemunduran kepada undang-undang sehingga kepada zaman soal siasat di bawah mahkamah-mahakamh Star Chamber. Soal siasat dalam ertikata penyoalan agresif bukan setakat menanyakan soalan, tetapi menyoal dan mendesak untuk satu jawapan sehingga penyoal siasat berpuas hati dengan jawapannya. Bahaya meletakkan seorang di bawah reman untuk disoal siasat meningkat kerana beliau tidak mempunyai kebebasan untuk beredar bebas daripada disoal siasat (lihat ms 381A, C–D).

(3) Seksyen 117 KAJ tidak memberikan kuasa reman ke atas seseorang bagi tujuan menyoal beliau secara agresif (menyoal siasat) kerana ss 112 dan 113 KAJ tidak dalam apa keadaan memberikan kuasa menyoal siasat orang yang disyaki, beliau boleh disoal secara sistematik (diperiksa) hanya jika beliau telah diberikan amaran. Satu perintah reman bagi tujuan menyoal siasat seorang saksi, atau memeriksa beliau tanpa menunjukkan beliau telah diberikan amaran adalah oleh itu tidak sah dari segi undang-undang (lihat ms 383I–384A).

(4) Alasan-alasan yang patut hanya diterima oleh majistret terkandung dalam alasan-alasan kumpulan ketiga. Walaupun alasan-alasan kumpulan kedua dan pertama bukan alasan-alasan yang betul dan sah, alasan-alasan kumpulan ketiga tidak boleh dikatakan sebagai di luar aturan, tidak sah dan tidak betul. Sifat kesalahan yang beliau disoal siasatkan adalah tentang perancangan dan pengurusan demonstrasi awam harian di jalanan, yang melibatkan kerjasama secara diam-diam, kerjasama dan penglibatan ramai orang lain. Adalah jelas bahawa siasatan sebegini mengambil masa, dan pembebasan beliau akan menjejaskan siasatan ini. Dalam keadaan ini reman empat hari di peringkat permulaan tersebut tidak boleh dikatakan tidak diperlukan (lihat ms 384D–F).].

Notes

For cases on police investigation generally, see 5 *Mallal's Digest* (4th Ed, 1997 Reissue) para 2069–2191.

Cases referred to

Goi Ching Ang v PP [1999] 1 MLJ 507 (refd)
McDermott v The King (1948) 76 CLR 501 (refd)
R v Swaffield; Pavic v The Queen [1998] HCA 1 (refd)
Rees v Kratzmann (1965) 114 CLR 63 (refd)
Syed Muhammad bin Syed Isa & Ors, Re Kuala Lumpur Criminal Revisions 43–03–2001, 43–05–2001, 43–06–2001 & 43–07–2001 (refd)

Legislation referred to

Criminal Procedure Code ss 112(3), 113(1)(a)(ii), (b), 117(iii), 119(i), (ii), 323(i)
Federal Constitution art 5(1)

Appeal from: Arrest Case No 2–62–23 of 2001 (Sessions Court, Kuala Lumpur)

Zainur Zakaria (*Zainur Zakaria & Associates*) for the appellant.
Zauyah Bee bte Loth Khan (*Umar Saifuddin bin Jaafar* with her) (Attorney General's Chambers) for the respondent.

Abdul Wahab Patail J:. The remand application and order made in respect of Mohamad Ezam bin Mohd Nor ('the suspect') by the Magistrate's Court, Kuala Lumpur on 7 March 2001 was brought to my attention by his counsel, En Zainur Zakaria and assisted by N Surendran in the morning of the following day. In so doing, his letter included the application for remand made by the police.

The six reasons given by the police in support of the application may be summarized in three broad categories as follows:

(a) To conduct questioning upon the suspect so as to find out the plans and motive in promoting and encouraging the public to participate in illegal assemblies; to find out from the suspect other persons acting in concert and involved in the offences under investigation. (Alasan 3 and 4)

(b) To assist the police to identify and find documents and equipment involved in the investigation, including the admission by the suspect that he was involved in the planning to launch daily demonstrations in the streets. (Alasan 1)

(c) To enable the police to identify witnesses who can assist in investigations; other persons involved with the suspect; and to record intelligent statements so as to ascertain if national security is

threatened or otherwise as a result of the actions of the suspect. (Alasan-alasan 2, 5 and 6)

Whilst the third category refers clearly to ordinary steps in an investigation process involving the particular information or accusation against the suspect, the first two categories involve questioning of a suspect under remand in police custody to obtain from him the information in respect of the crime alleged against him. These reasons require legal scrutiny.

For the purpose of satisfying myself as to the correctness, legality or propriety of the order made by the magistrate, and the regularity of the proceedings, I had acted under s 323(i) of the Criminal Procedure Code ('the CPC') to call for and to examine the record of the remand proceedings in respect of the suspect, in particular:

(a) The copy of the entries in the diary of proceedings in the investigation of the investigating officer.

(b) The reasons recorded under s 117(iii) of the CPC in authorizing the remand into police custody.

The calling for the record for examination was necessary because the copy of the entries in the diary of proceedings in the investigation of the investigating officer, upon which the magistrate must rely for the factual basis in deciding whether remand of the suspect is necessary or otherwise, by virtue of s 119(ii) of the CPC, is not available to the suspect or his counsel, who consequently are unable to present it to me for review.

Upon examination of the record, I found that a copy of the entries in the investigation diary was submitted to the magistrate in accordance with s 117 of the CPC. In addition I found that in ordering the remand of four days, to wit, from 7 to 10 March 2001, it appears that the magistrate had accepted all of the reasons advanced by the police in the application.

Although s 117(iii) of the CPC requires the magistrate to record his reasons for remanding a person into police custody, the section does not itself provide guidelines of the reasons that may be accepted. The acceptable reasons may however be inferred from s 119 of the CPC which sets out the matters that must be made available to the magistrate to enable him to decide whether or not and for what period, a remand order ought to be granted:

> 119 Diary of proceedings in investigation
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> (i) Every police officer making a police investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary setting forth —
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> (a) the time at which the order, if any, for investigation reached him;
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> (b) the time at which he began and closed the investigation;
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> (c) the place or places visited by him; and
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> (d) a statement of the circumstances ascertained through his investigation.
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> (ii) Notwithstanding anything contained in the (Evidence Ordinance 1950), an accused person shall not be entitled, either before or in the course of

any inquiry or trial, to call for or inspect any such diary: provided that if the police officer who has made the investigation refers to the diary for the purposes of ss 159 or 160 of the said Ordinance such entries only as such officer has referred to shall be shown to the accused, and the court shall at the request of such officer cause any other entries to be concealed from view or obliterated.

It is clear that the emphasis in s 119(i) of the CPC is that the diary must show that whatever period of personal liberty a suspect is deprived of is not wasted but is used diligently to further the investigation. But there is nothing in s 119 of the CPC that specifically provides for or authorizes interrogation or questioning of the suspect.

In the circumstances, the reasons in the first two categories at para 2 above require legal scrutiny. I had therefore directed the parties to appear before me to be heard upon the examination of the correctness, legality or propriety of the reasons that were advanced in support of the application.

To proceed directly to the issues, I had asked the learned senior deputy public prosecutor, En Mohd Yusof bin Zainal ('the senior deputy public prosecutor') to submit as why the remand order ought not to be disturbed. More specifically, I had invited the learned senior deputy public prosecutor to submit whether the purpose of obtaining statements under ss 112 or 113 of the CPC authorizes, under s 117 of the CPC, the remand of a person in police custody. More generally, the question is to what extent may a suspect be detained in police custody to assist the latter in their investigations.

The first submission by the learned senior deputy public prosecutor went further than the argument that the purpose of obtaining a cautioned statement justifies remanding a person into police custody. He submitted that the police have a right to interrogate a suspect because interrogation of the suspect is an integral part of conducting investigations. Although he was aware of my decision in *Re Syed Muhammad bin Syed Isa & Ors* (Kuala Lumpur Criminal Revisions 43–03–2001, 43–05–2001, 43–06–2001 & 43–07–2001), he nevertheless argued that interrogation of a suspect is a necessary part of the investigation process, to aid in such investigations eventhough information obtained under such interrogation may not be admissible in evidence. In pressing upon his submission, he argued that reasonable persuasion may be used to do so, and the limit upon the authorities was that it should not break the law such as by causing hurt etc. He submitted there was no provision of law that prevented the police from interrogating a suspect.

It is true that there is no law that specifically provides that the police may not interrogate a suspect. But at the same time, it is equally true that there is no law that says that the police may interrogate a suspect. In the circumstances, it is necessary to consider the wordings of the existing law that pertains to remands generally.

The law that authorizes remand into police custody is s 117 of the CPC which provides as follows:

117 Procedure where investigation cannot be completed within twenty-four hours

(i) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by s 28 and there are grounds for believing that the accusation or information is well founded, the police officer making the investigation shall forthwith transmit to a magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time produce the accused before such magistrate.

(ii) The magistrate before whom an accused person is produced under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such magistrate thinks fit for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case and considers further detention unnecessary, he may order the accused person to be produced before a magistrate having such jurisdiction or, if the case is triable only by the High Court, before himself or another magistrate having jurisdiction with a view to committal for trial by the High Court.

(iii) A magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

The primary provision of law upon which the above is founded is art 5(1) of the Federal Constitution ('the Constitution') which provides:

> No person shall be deprived of his life or personal liberty save in accordance with law.

The words 'save in accordance with law' require that there must be specific and explicit law that actually provides for it. Since the Constitution is the supreme law of the Federation, such a strict interpretation is to be applied in interpreting s 117 of the CPC. There is no room for a permissive interpretation that a deprivation of the liberty of the suspect to enable the police to question or to interrogate him is allowed because there is no law against it when s 117 of the CPC itself does not make it clear.

Examination of witnesses is authorized by s 112 of the CPC. The learned senior deputy public prosecutor relies upon it for his argument. The extent to which it so authorizes is made clear by a close examination of its terms:

(i) A police officer making a police investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

(ii) Such person shall be bound to answer all questions relating to such case put to him by such officer:

Provided that such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(iii) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.

(iv) A police officer examining a person under sub-s (1) shall first inform that person of the provisions of sub-ss (2) and (3).

(v) A statement made by any person under this section whether or not a caution has been administered to him under s 113(1) of the CPC shall, whenever possible, be taken down in writing and signed by the person making it or affixed with his thumb print as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any corrections he may wish.

The section refers to examination of witnesses. The moment any person, including a witness, is arrested, he is no longer a witness but is a suspect, and s 112 of the CPC is no longer of any application to that person. In any case, a witness can refuse to answer questions if it has a tendency to expose him to a criminal charge or penalty or forfeiture. Thus, whatever right is conferred by s 112 of the CPC upon the police to require a witness to submit to examination, it is only if he is examined as a witness.

More importantly, although the section empowers the police to examine a witness, it does not empower the police to arrest a witness for the purpose of examining him, let alone interrogate him. Arresting a witness and keeping him in custody to answer questions under s 112 of the CPC or to be interrogated is such a novel, even radical, development to criminal procedure that there must be express words in the section so as to authorize it. The argument that s 112(3) of the CPC provides the statement is admissible 'whether or not such statement is made wholly or partly in answer to questions' implies that more than questioning is allowed, carries no persuasive value worth discussing at length. The subsection is intended to enable the admission of statements made that are not necessarily a direct answer to the question that is put to the witness.

The learned senior deputy public prosecutor relied also on s 113 of the CPC. It provides:

113 Admission of statements in evidence

(1) Where any person is charged with any offence any statement, whether the statement amounts to a confession or not or is oral or in writing, made at any time, whether before or after the person is charged and whether in the course of a police investigation or not and whether or not wholly or partly in answer to questions, by that person to or in the hearing of any police officer of or above the rank of Inspector and whether or not interpreted to him by another police officer or other person shall be admissible in evidence at his trial and, if the person charged tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit:

Provided that:

(a) no such statement shall be admissible or used as aforesaid:

(i) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge proceeding from a person in authority and sufficient in the opinion of the court to give the person charged grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil

of a temporal nature in reference to the proceeding against him; or

(ii) in the case of a statement made by the person after his arrest, unless the court is satisfied that a caution was administered to him in the following words or words to the like effect:

'It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not, may be given in evidence'; and

(b) a statement made by any person before there is time to caution him shall not be rendered inadmissible in evidence merely by reason of no such caution having been administered if it has been administered as soon as possible.

(2) Notwithstanding anything to the contrary contained in any written law a person accused of an offence to which sub-s (1) applies shall not be bound to answer any questions relating to the case after any such caution as aforesaid has been administered to him.

Whether or not the statement is wholly or partly in answer to questions, by that person, the statement must be to or in the hearing of any police officer of or above the rank of inspector. What is indisputable is that the court must be satisfied that in the case of a statement by a person made after his arrest, a caution as in the proviso in s 113(1)(a)(ii) of the CPC has been administered to that person, or that the caution has been administered to him as soon as possible. The condition in s 113(1)(b) of the CPC is that the statement was made before there was time to caution him. It does not justify the delay in giving him a caution. It refers to a situation where an arrested person makes a statement of his owm accord before there was time to caution him. It is of no application in remand cases.

These provisions support the conclusion that the police may ask questions, but not to go so far as to say that the police may detain that person in custody for the purpose of obtaining statements under ss 112 or 113 of the CPC. That the provisions fail to state that the police may arrest and detain a person in custody for the purpose of obtaining such statements is a weighty argument against the notion that the purpose of obtaining such statements is a valid ground for seeking his arrest and remand.

It is also useful to examine the use of the operative words in ss 112 and 113 of the CPC in terms of the questioning that is authorized.

While s 112 of the CPC uses the term 'examine' in relation to witnesses, s 113 of the CPC uses the term 'questions'. Professional questioning is questioning in a systematic manner, and may be described as examining the person. Even so, it must be noted that the term examined in s 112 of the CPC is used in the context where there is an obligation to answer questions and to tell the truth as a witness, while in s 113 of the CPC only the term question is used.

Now, s 113 of the CPC refers to answers by a person in custody to questions put to him. Asking questions of a person in custody or otherwise is based upon the right of freedom of speech. The person who is asked those questions has the right to refuse to answer or to answer to those questions

put to him. Indeed, the purpose of s 113 of the CPC is to protect the person in custody by requiring that the caution under s 113(a)(ii) of the CPC must first have been administered, or as soon as possible. However, it is clear that s 113 does not state that there is any right conferred upon the authorities to examine or interrogate a person who is in custody.

Ground 3 of the application for remand is 'Menjalankan soalsiasat ke atas suspek …'. Now, in the Malay language 'soal siasat' can mean examine or interrogate. Provided these terms are confined to the meaning of question or questioning formally, closely and thoroughly there appears to be no contravention. However the terms interrogate and interrogation may be understood in other jurisdictions or countries, in Malaysia, they carry the meaning 'to question aggressively' (see *Fajar-Oxford Advanced Learner's English-Malay Dictionary*). The dangers arising out of the belief one could question aggressively requires me to address the issue in no uncertain terms.

That the legislature chose to use terms other than 'interrogate' is clear indication that the legislature does not intend to retrogress to the laws of the age of inquisition under the courts of the Star Chamber. Interrogation in the sense of questioning aggressively is not simply asking questions, but questioning and insisting upon an answer until the interrogator is satisfied with his answers. The dangers of placing a person under remand so as to be so interrogated are heightened because he is not at liberty to walk out and walk away from such interrogation.

The view that any evidence obtained from witnesses or accused persons under such interrogation, in other words, not of a voluntary nature, unlike that obtained from a person having the right not to answer the question, is so well accepted as inherently unsafe that even if the evidence is technically admissible it may still be excluded as being inherently unsafe to rely on (see *Goi Ching Ang v PP* [1999] 1 MLJ 507).

The latter concern reflects the traditional objection to interrogation, the origin of which was stated by Windeyer J in *v Kratzmann* (1965) 114 CLR 63 at p 80:

> There is in the common law a traditional objection to compulsory interrogations. Blackstone explained it: 'For at the common law, *nemo tenebatur prodere seipsum*: and his fault was not to be wrung out of himself, but rather to be discovered by other means, and other men': Comm iv 296. The continuing regard for this element in the lawyer's notion of justice may be, as has been suggested, partly a consequence of a persistent memory in the common law of hatred of the Star Chamber and its works. It is linked with the cherished view of English lawyers that their methods are more just than are the inquisitional procedures of other countries.

In *R v Swaffield*; *Pavic v The Queen* [1998] HCA 1, in an instructive discussion on voluntariness, the unfairness discretion and public policy discretion for the exclusion of evidence, the High Court of Australia quoted Devlin J as having been reported to have directed a jury in these terms:

> So great is our horror at the idea that a man might be questioned, forced to speak and perhaps to condemn himself out of his own mouth ... that we afford to everyone suspected or accused of a crime, at every stage, and to the very

> end, the right to say: 'Ask me no questions, I shall answer none. Prove your case'.

Indeed the courts have the discretion to exclude evidence otherwise admissible if it had been obtained by unfair means. In *McDermott v The King* (1948) 76 CLR 501 at pp 512–513, Dixon J explained:

> The view that a judge presiding at a criminal trial possesses a discretion to exclude evidence of confessional statements is of comparatively recent growth. To some extent the course of its development is traced by Lord Sumner in *Ibrahim's case*. In part perhaps it may be a consequence of a failure to perceive how far the settled rule of the common law goes in excluding statements that are not the outcome of an accused person's free choice to speak. In part, the development may be due to the fact that the judges in 1912 framed or approved of rules for the guidance of the police in their inquiries (see *R v Voisin*; Archbold on *Pleading, Evidence and Practice in Criminal Cases*) and not unnaturally have sought to insist on their observance. In part too it may be due to the existence of the jurisdiction of the Court of Criminal Appeal to quash a conviction if the court is of opinion that on any ground whatsoever there was a miscarriage of justice. But whatever may be the cause, there has arisen almost in our own time a practice in England of excluding confessional statements made to officers of police if it is considered upon a review of all the circumstances that they have been obtained in an improper manner. *The abuse of the power of arrest by using the detention of an accused person as an occasion for securing from him evidence by admission is treated as an impropriety justifying the exclusion of the evidence*. So is insistence upon questions or an attempt to break down or qualify the effect of an accused person's statement so far as it may be exculpatory. (Emphasis added.)

To bring the question before us back into its proper perspective and focus, it must be borne in mind clearly that the issue before this court is whether the purpose of interrogating the suspect or to obtain cautioned statements under s 113 of the CPC are valid grounds to obtain an order for remand. Without the specific sanction of any law, the right to ask questions arises only from the right of freedom of speech: any person, even the police, can ask questions. But it is up to the person to whom the questions are asked to answer them or not.

It was submitted by the learned senior deputy public prosecutor, in relation to s 117 of the CPC that it is for the police officer making the investigations to be satisfied that the accusation or information is well founded. En Zainur Zakaria, on the other hand, sought to urge upon the court that there was no purpose to remand his client into custody because since he was left alone after obtaining the remand order, there was no reason to remand the suspect in custody. These arguments miss the real point established by s 117 of the CPC. While it is true that the said officer must first be satisfied that the accusation or information is well founded before he makes an application for remand, the magistrate has a judicial discretion to discharge. He must consider the nature of the information or accusation. He must consider whether based upon the copy of the entries in the diary of proceedings of investigation of the investigating officer, he agrees and accepts:

(a) that the information or complaint is well-founded;

(b) the investigation is not complete;

(c) that continued investigations could witness and evidence to complete the investigations;

(d) that for that purpose the continued remand of the accused is necessary to ensure:

(i)his attendance in court to be charged;

(ii)he does not interfere with witnesses; or

(iii)he does not interfere with other evidence yet to be collected.

In *Re Syed Muhammad bin Syed Isa & Ors* was held:

> 16 Since completion of investigation is the purpose of the application under s 117(i) of the CPC, it cannot itself be the reasons or grounds supporting the application. The entries of the investigation diary provide the foundation upon which the reasons or grounds supporting the application are identified and weighed. Thus the entries in the diary may support the application by showing
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> (a) diligent investigation in the first 24 hours after arrest, or in the period of remand by the magistrate, shows or continues to show grounds for believing the information or accusation to be well founded;
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> (b) such investigation points to the existence of certain witnesses and/or evidence that is necessary to complete investigations, and
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> (c) such witnesses and/or evidence could be obtained within so many days, but
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> (d) which would be jeopardized if the arrested person were not kept out of circulation by a remand.

It is necessary to bear in mind the only grounds upon which the personal liberty of a person not yet proven beyond reasonable doubt to be guilty and not yet convicted, for such is the legal situation of a suspect, may be abridged by deprivation of it by arrest and remand before he is charged, in order to serve the public interest that laws are enforced and offenders be brought to justice for their offences are where the suspect is likely to abscond, interfere with witnesses and/or evidence. He is not remanded into custody as any form of punishment. It is also necessary to bear in mind that whilst cooperation in investigations is a factor to be taken into account for mitigation in sentencing, non-cooperation is not a factor for enhancing sentence as it would negate his right to remain silent. There is therefore, no basis to hold a person in custody until he cooperates. No matter how guilty a person may be, he is entitled to a trial where the burden is entirely upon the prosecution to prove, beyond reasonable doubt, that he is guilty of the offence with which he is charged. There is therefore no legal basis for any argument he may be interrogated until he is forthcoming and assists in the investigation against him.

For all of the reasons above, I conclude that s 117 of the CPC does not authorize the remand of a person for the purpose of questioning him aggressively (interrogating) because ss 112 and 113 of the CPC do not in any case authorize interrogation of a suspect, and he may be questioned

systematically (examined) only if he had been cautioned. A remand order for the purpose of interrogating a suspect, or examining him without showing he has been cautioned is therefore bad in law.

The learned senior deputy public prosecutor had argued also that the interrogation was not disallowed because the police did not intend to use the answers as evidence.

Ingenious as it may be, this argument makes it clear the learned senior deputy public prosecutor understands the term interrogation as questioning aggressively, where the answers are inadmissible.

The argument ignores also the inherent danger that when an interrogator is not satisfied with an answer, the interrogation in the sense of aggressive questioning may well get out of hand. Allowing such interrogation may result also in officers being forced to conduct interrogations to satisfy superiors, where if they fail their superiors, they will be at a disadvantage, and yet, to satisfy them, the interrogators themselves might break the law and pay with their careers. Given that interrogation may not result in entirely reliable answers, the dangers far outweigh any benefit that may be derived by the courts giving its sanction to a process that clearly does not itself produce admissible evidence.

The only reasons that ought to have been accepted by the magistrate are as contained in the third group of reasons. Eventhough the first two groups of reasons are not correct, legal or proper grounds, the third group of reasons cannot be said to be irregular, incorrect, illegal or improper. The nature of the offence for which he is investigated is of planning and organizing daily public demonstrations in the streets and involved the connivance, cooperation and participation of many other persons. It is obvious that such investigations would take time, and his release would jeopardize the investigations. In the circumstances, the initial remand of four days cannot be said to be unnecessary.

It may be asked why it is necessary to conduct a hearing if the court does not make an order in revision to change the order that was made by the magistrate. The hearing serves the purpose of establishing clearly what are valid and what are not valid reasons for the making of a remand order. It also shows that remand orders must not be taken lightly, but must be scrutinized judicially. It is important to state which reasons are accepted when making the remand order because then the police will have proper guidance what the remand is for. If not corrected in this case, the general acceptance of all the reasons advanced in the remand application could result in the police conducting interrogations generally in the belief that it is regular, legal and proper to do so.

Remand order affirmed on the third group of reasons.

Reported by Moy Saw Han